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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of:

JOSELITO B. GARCIA
49 Capp Street
San Francisco, CA 94103
Registered Nurse License No. 461597

Respondent.

Case No. 2006-9

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties that
the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
the Board of Registered Nursing, who brought this action solely in her official capacity.

2. Joselito B. Garcia (Respondent), is a probationary registered nurse.

JURISDICTION

3. On June 22, 2006, the Board of Registered Nursing adopted Stipulated
Settlement and Disciplinary Order No. 2006-9, which became effective on July 24, 2006. The
Stipulated Settlement and Disciplinary Order requires, inter alia, the respondent to serve a three-
year probation term that includes Probation Conditions # 1 through # 19. The Stipulated
Settlement and Disciplinary Order is attached as exhibit A and incorporated herein by reference.

Condition #13 of the Stipulated Settlement and Disciplinary Order allows
the Board of Registered Nursing to accept the surrender of the respondent's license if he ceases
practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
probation.

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1 11. Respondent shall cause to be delivered to the Board both his wall and
2 pocket license certificate on or before the effective date of the Decision and Order.

3 12. Respondent fully understands and agrees that if he ever files an application
4 for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a
5 petition for reinstatement. Respondent must comply with all the laws, regulations and
6 procedures for reinstatement of a revoked license in effect at the time the petition is filed.

7 13. Upon reinstatement of the license or prior to issuance of any new license
8 by the Board, Respondent shall pay to the Board costs associated with its investigation and
9 enforcement pursuant to Business and Professions Code section 125.3 in the amount of
10 \$1892.25 which is the amount currently owed pursuant to Stipulated Settlement and Disciplinary
11 Order No. 2006-9 (Exhibit A). If the reinstatement of Respondent's license is granted,
12 Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

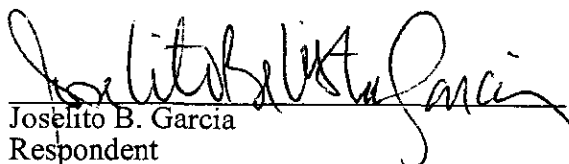
13 14. Respondent shall not apply for licensure or petition for reinstatement for
14 two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

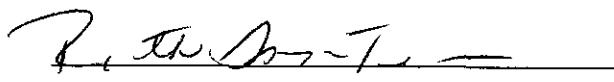
DATED: Dec. 10, 2007.


Joselito B. Garcia
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully accepted by Ruth Ann Terry, Executive Officer for the Board of Registered Nursing.

DATED: 11/30/08


RUTH ANN TERRY
Executive Officer
BOARD OF REGISTERED NURSING

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EXHIBIT "A"

Stipulated Settlement and Disciplinary Order No. 2006-9

1 **BOARD OF REGISTERED NURSING**
2 **DEPARTMENT OF CONSUMER AFFAIRS**
3 **STATE OF CALIFORNIA**

4 In the Matter of:

Case No. 2006-9

5 Joselito B. Garcia
6 49 Capp Street
7 San Francisco, CA 94103

Registered Nurse License No. 461597


Respondent.

9
10 **DECISION AND ORDER**

11 The attached Stipulated Surrender of License and Order is hereby adopted by the
12 Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

13
14 It is so ORDERED on MARCH 12, 2008.

15
16 This Decision shall become effective on MARCH 12, 2008.

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19 Ruth Ann Terry, Executive Officer
20 FOR THE BOARD OF REGISTERED NURSING
21 DEPARTMENT OF CONSUMER AFFAIRS
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BILL LOCKYER, Attorney General
of the State of California
FRANK H. PACOE, State Bar No. 91740
Supervising Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5556
Facsimile: (415) 703-5480

Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2006-9

JOSELITO B. GARCIA
49 Capp Street
San Francisco, California 94103

OAH No.

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

and

653 Babsit
Manaoag, Pangasinan Philippines 2430

Registered Nurse License No. 461597

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
the Board of Registered Nursing. She brought this action solely in her official capacity and is
represented in this matter by Bill Lockyer, Attorney General of the State of California,
by Frank H. Pacoe, Supervising Deputy Attorney General.

2. Respondent Joselito B. Garcia (Respondent) is representing himself in this
proceeding and has chosen not to exercise his right to be represented by counsel.

1 3. On or about March 31, 1991, the Board of Registered Nursing issued
2 Registered Nurse License No. 461597 to Joselito B. Garcia (Respondent). The Registered Nurse
3 License will expire on February 25, 2007, unless renewed.

4 JURISDICTION

5 4. Accusation No. 2006-9 was filed before the Board of Registered Nursing
6 (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 August 5, 2005. Respondent timely filed his Notice of Defense contesting the Accusation.
9 A copy of Accusation No. 2006-9 is attached as exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations
12 in Accusation No. 2006-9. Respondent has also carefully read, and understands the effects of
13 this Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
17 the right to present evidence and to testify on his own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 2006-9.

26 9. Respondent agrees that his Registered Nurse License is subject to
27 discipline and he agrees to be bound by the Board of Registered Nursing (Board) 's imposition of
28 discipline as set forth in the Disciplinary Order below.

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1 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
2 compliance with this condition, Respondent shall submit completed fingerprint forms and
3 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
4 as part of the licensure application process.

5 **Criminal Court Orders:** If Respondent is under criminal court orders, including
6 probation or parole, and the order is violated, this shall be deemed a violation of these probation
7 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

8 2. **Comply with the Board's Probation Program.** Respondent shall fully
9 comply with the conditions of the Probation Program established by the Board and cooperate
10 with representatives of the Board in its monitoring and investigation of the Respondent's
11 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
12 within no more than 15 days of any address change and shall at all times maintain an active,
13 current license status with the Board, including during any period of suspension.

14 Upon successful completion of probation, Respondent's license shall be fully
15 restored.

16 3. **Report in Person.** Respondent, during the period of probation, shall
17 appear in person at interviews/meetings as directed by the Board or its designated
18 representatives.

19 4. **Residency, Practice, or Licensure Outside of State.** Periods of
20 residency or practice as a registered nurse outside of California shall not apply toward a reduction
21 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
22 California. Respondent must provide written notice to the Board within 15 days of any change of
23 residency or practice outside the state, and within 30 days prior to re-establishing residency or
24 returning to practice in this state.

25 Respondent shall provide a list of all states and territories where he has ever been
26 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
27 provide information regarding the status of each license and any changes in such license status
28 during the term of probation. Respondent shall inform the Board if he applies for or obtains a

1 new nursing license during the term of probation.

2 **5. Submit Written Reports.** Respondent, during the period of probation,
3 shall submit or cause to be submitted such written reports/declarations and verification of actions
4 under penalty of perjury, as required by the Board. These reports/declarations shall contain
5 statements relative to Respondent's compliance with all the conditions of the Board's Probation
6 Program. Respondent shall immediately execute all release of information forms as may be
7 required by the Board or its representatives.

8 Respondent shall provide a copy of this Decision to the nursing regulatory agency
9 in every state and territory in which he has a registered nurse license.

10 **6. Function as a Registered Nurse.** Respondent, during the period of
11 probation, shall engage in the practice of registered nursing in California for a minimum of 24
12 hours per week for 6 consecutive months or as determined by the Board.

13 For purposes of compliance with the section, "engage in the practice of registered
14 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
15 work in any non-direct patient care position that requires licensure as a registered nurse.

16 The Board may require that advanced practice nurses engage in advanced practice
17 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
18 Board.

19 If Respondent has not complied with this condition during the probationary term,
20 and Respondent has presented sufficient documentation of his good faith efforts to comply with
21 this condition, and if no other conditions have been violated, the Board, in its discretion, may
22 grant an extension of Respondent's probation period up to one year without further hearing in
23 order to comply with this condition. During the one year extension, all original conditions of
24 probation shall apply.

25 **7. Employment Approval and Reporting Requirements.** Respondent
26 shall obtain prior approval from the Board before commencing or continuing any employment,
27 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
28 performance evaluations and other employment related reports as a registered nurse upon request

1 of the Board.

2 Respondent shall provide a copy of this Decision to his employer and immediate
3 supervisors prior to commencement of any nursing or other health care related employment.

4 In addition to the above, Respondent shall notify the Board in writing within
5 seventy-two (72) hours after he obtains any nursing or other health care related employment.
6 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
7 or separated, regardless of cause, from any nursing, or other health care related employment with
8 a full explanation of the circumstances surrounding the termination or separation.

9 8. **Supervision.** Respondent shall obtain prior approval from the Board
10 regarding Respondent's level of supervision and/or collaboration before commencing or
11 continuing any employment as a registered nurse, or education and training that includes patient
12 care.

13 Respondent shall practice only under the direct supervision of a registered nurse
14 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
15 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
16 are approved.

17 Respondent's level of supervision and/or collaboration may include, but is not
18 limited to the following:

19 (a) Maximum - The individual providing supervision and/or collaboration is
20 present in the patient care area or in any other work setting at all times.

21 (b) Moderate - The individual providing supervision and/or collaboration is in
22 the patient care unit or in any other work setting at least half the hours Respondent works.

23 (c) Minimum - The individual providing supervision and/or collaboration has
24 person-to-person communication with Respondent at least twice during each shift worked.

25 (d) Home Health Care - If Respondent is approved to work in the home health
26 care setting, the individual providing supervision and/or collaboration shall have person-to-
27 person communication with Respondent as required by the Board each work day. Respondent
28 shall maintain telephone or other telecommunication contact with the individual providing

1 supervision and/or collaboration as required by the Board during each work day. The individual
2 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
3 site visits to patients' homes visited by Respondent with or without Respondent present.

4 9. **Employment Limitations.** Respondent shall not work for a nurse's
5 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
6 traveling nurse, or for an in-house nursing pool.

7 Respondent shall not work for a licensed home health agency as a visiting nurse
8 unless the registered nursing supervision and other protections for home visits have been
9 approved by the Board. Respondent shall not work in any other registered nursing occupation
10 where home visits are required.

11 Respondent shall not work in any health care setting as a supervisor of registered
12 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
13 nurses and/or unlicensed assistive personnel on a case-by-case basis.

14 Respondent shall not work as a faculty member in an approved school of nursing
15 or as an instructor in a Board approved continuing education program.

16 Respondent shall work only on a regularly assigned, identified and predetermined
17 worksite(s) and shall not work in a float capacity.

18 If Respondent is working or intends to work in excess of 40 hours per week, the
19 Board may request documentation to determine whether there should be restrictions on the hours
20 of work.

21 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
22 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
23 than six months prior to the end of his probationary term.

24 Respondent shall obtain prior approval from the Board before enrolling in the
25 course(s). Respondent shall submit to the Board the original transcripts or certificates of
26 completion for the above required course(s). The Board shall return the original documents to
27 Respondent after photocopying them for its records.

28 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with

1 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
2 amount of \$1,892.25. Respondent shall be permitted to pay these costs in a payment plan
3 approved by the Board, with payments to be completed no later than three months prior to the
4 end of the probation term.

5 If Respondent has not complied with this condition during the probationary term,
6 and Respondent has presented sufficient documentation of his good faith efforts to comply with
7 this condition, and if no other conditions have been violated, the Board, in its discretion, may
8 grant an extension of Respondent's probation period up to one year without further hearing in
9 order to comply with this condition. During the one year extension, all original conditions of
10 probation will apply.

11 12. **Violation of Probation.** If Respondent violates the conditions of his
12 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
13 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
14 license.

15 If during the period of probation, an accusation or petition to revoke probation has
16 been filed against Respondent's license or the Attorney General's Office has been requested to
17 prepare an accusation or petition to revoke probation against Respondent's license, the
18 probationary period shall automatically be extended and shall not expire until the accusation or
19 petition has been acted upon by the Board.

20 13. **License Surrender.** During Respondent's term of probation, if he ceases
21 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
22 probation, Respondent may surrender his license to the Board. The Board reserves the right to
23 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
24 take any other action deemed appropriate and reasonable under the circumstances, without
25 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
26 will no longer be subject to the conditions of probation.

27 Surrender of Respondent's license shall be considered a disciplinary action and
28 shall become a part of Respondent's license history with the Board. A registered nurse whose

1 license has been surrendered may petition the Board for reinstatement no sooner than the
2 following minimum periods from the effective date of the disciplinary decision:

3 (1) Two years for reinstatement of a license that was surrendered for any
4 reason other than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

6 14. **Physical Examination.** Within 45 days of the effective date of this
7 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
8 physician assistant, who is approved by the Board before the assessment is performed, submit an
9 assessment of the Respondent's physical condition and capability to perform the duties of a
10 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
11 medically determined, a recommended treatment program will be instituted and followed by the
12 Respondent with the physician, nurse practitioner, or physician assistant providing written
13 reports to the Board on forms provided by the Board.

14 If Respondent is determined to be unable to practice safely as a registered nurse,
15 the licensed physician, nurse practitioner, or physician assistant making this determination shall
16 immediately notify the Board and Respondent by telephone, and the Board shall request that the
17 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
18 shall immediately cease practice and shall not resume practice until notified by the Board.
19 During this period of suspension, Respondent shall not engage in any practice for which a license
20 issued by the Board is required until the Board has notified Respondent that a medical
21 determination permits Respondent to resume practice. This period of suspension will not apply
22 to the reduction of this probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within
24 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
25 practice until notified by the Board. This period of suspension will not apply to the reduction of
26 this probationary time period. The Board may waive or postpone this suspension only if
27 significant, documented evidence of mitigation is provided. Such evidence must establish good
28 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be

provided. Only one such waiver or extension may be permitted.

15. **Participate in Treatment/Rehabilitation Program for Chemical Dependence.** Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

16. **Abstain from Use of Controlled Substances and Psychotropic (Mood-Altering) Drugs.** Respondent shall completely abstain from the possession, injection or consumption by any route of all controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or

1 physician assistant who shall be aware of Respondent's history of substance abuse and will
2 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
3 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
4 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
5 condition. If any substances considered addictive have been prescribed, the report shall identify a
6 program for the time limited use of any such substances.

7 The Board may require the single coordinating physician, nurse practitioner, or
8 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
9 addictive medicine.

10 **17. Submit to Tests and Samples.** Respondent, at his expense, shall
11 participate in a random, biological fluid testing or a drug screening program which the Board
12 approves. The length of time and frequency will be subject to approval by the Board.
13 Respondent is responsible for keeping the Board informed of Respondent's current telephone
14 number at all times. Respondent shall also ensure that messages may be left at the telephone
15 number when he is not available and ensure that reports are submitted directly by the testing
16 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
17 to the Board by the program and Respondent shall be considered in violation of probation.

18 In addition, Respondent, at any time during the period of probation, shall fully
19 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
20 tests and samples as the Board or its representatives may require for the detection of alcohol,
21 narcotics, hypnotics, dangerous drugs, or other controlled substances.

22 If Respondent has a positive drug screen for any substance not legally authorized
23 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
24 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
25 from practice pending the final decision on the petition to revoke probation or the accusation.
26 This period of suspension will not apply to the reduction of this probationary time period.

27 If Respondent fails to participate in a random, biological fluid testing or drug
28 screening program within the specified time frame, Respondent shall immediately cease practice

1 and shall not resume practice until notified by the Board. After taking into account documented
2 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
3 Board may suspend Respondent from practice pending the final decision on the petition to
4 revoke probation or the accusation. This period of suspension will not apply to the reduction of
5 this probationary time period.

6 18. **Mental Health Examination.** Respondent shall, within 45 days of the
7 effective date of this Decision, have a mental health examination including psychological testing
8 as appropriate to determine his capability to perform the duties of a registered nurse. The
9 examination will be performed by a psychiatrist, psychologist or other licensed mental health
10 practitioner approved by the Board. The examining mental health practitioner will submit a
11 written report of that assessment and recommendations to the Board. All costs are the
12 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
13 result of the mental health examination will be instituted and followed by Respondent.

14 If Respondent is determined to be unable to practice safely as a registered nurse,
15 the licensed mental health care practitioner making this determination shall immediately notify
16 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
17 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
18 practice and may not resume practice until notified by the Board. During this period of
19 suspension, Respondent shall not engage in any practice for which a license issued by the Board
20 is required, until the Board has notified Respondent that a mental health determination permits
21 Respondent to resume practice. This period of suspension will not apply to the reduction of this
22 probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within
24 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
25 practice until notified by the Board. This period of suspension will not apply to the reduction of
26 this probationary time period. The Board may waive or postpone this suspension only if
27 significant, documented evidence of mitigation is provided. Such evidence must establish good
28 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be

1 provided. Only one such waiver or extension may be permitted.

2 19. **Therapy or Counseling Program.** Respondent, at his expense, shall
3 participate in an on-going counseling program until such time as the Board releases him from this
4 requirement and only upon the recommendation of the counselor. Written progress reports from
5 the counselor will be required at various intervals.

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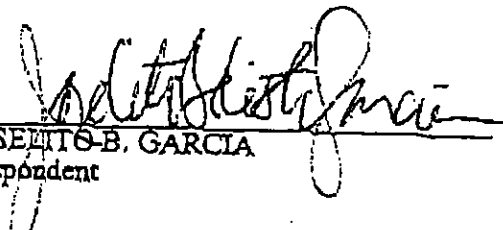
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1
2 ACCEPTANCE

3 I have carefully read the Stipulated Settlement and Disciplinary Order. I
4 understand the stipulation and the effect it will have on my Registered Nurse License. I enter
5 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
6 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

7 DATED: March 04 2006

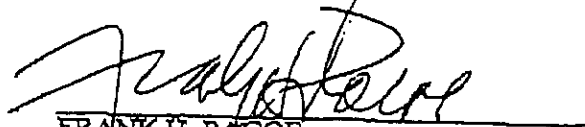
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10 JOSEITO B. GARCIA
11 Respondent
12

13 ENDORSEMENT

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
16 Affairs.

17
18 DATED: June 21, 2006

19 BILL LOCKYER, Attorney General
20 of the State of California

21 
22 FRANK H. PACOE
23 Supervising Deputy Attorney General
24 Attorneys for Complainant

25 DOI Matter ID: SF2005400271
26 400773422.wpd
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Exhibit A
Accusation No. 2006-9

BILL LOCKYER, Attorney General
of the State of California
FRANK H. PACOE, State Bar No. 91740
Supervising Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5556
Facsimile: (415) 703-5480

Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2006-9

JOSELITO B. GARCIA, aka JOSELITO
GARCIA, aka JOSELITO JAY JOSEPH
BELISTA, aka LILTO GARCIA, aka
LITO GARCIA, aka JOSELITO BELISTA
GARCIA, aka JOSELITO BELISTA, aka
JAY GARCIA, aka JOSEPH GARCIA
653 Babasit
Manaoag, Pangasinan
Philippines 2430

ACCUSATION

Registered Nurse License No. 461597

Respondent.

Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the
Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

License History

2. On or about March 31, 1991, the Board of Registered Nursing issued
Registered Nurse License Number 461597 to JOSELITO B. GARCIA ("Respondent") also
known as JOSELITO GARCIA, JOSELITO JAY JOSEPH BELISTA, LILTO GARCIA,

1 LITO GARCIA, JOSELITO BELISTA GARCIA, JOSELITO BELISTA, JAY GARCIA, and
2 JOSEPH GARCIA. The license will expire on February 28, 2007.

3, **STATUTORY PROVISIONS**

4 3. Section 2750 of the Business and Professions Code ("Code") provides, in
5 pertinent part, that the Board may discipline any licensee, including a licensee holding a
6 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
7 2750) of the Nursing Practice Act.

8 4. Code section 2764 provides, in pertinent part, that the expiration of a
9 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
10 against the licensee or to render a decision imposing discipline on the license. Under Code
11 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
12 years after the expiration.

13 5. Code section 118, subdivision (b), provides that the
14 suspension/expiration/surrender/cancellation of a license shall not deprive the Board jurisdiction
15 to proceed with a disciplinary action during the period within which the license may be renewed,
16 restored, reissued or reinstated.

17 6. Code section 2761 states, in pertinent part:

18 The board may take disciplinary action against a certified or licensed nurse or
19 deny an application for a certificate or license for any of the following:

20 (a) Unprofessional conduct, . . .

21 (f) Conviction of a felony or of any offense substantially related to the
22 qualifications, functions, and duties of a registered nurse, in which event the record of the
conviction shall be conclusive evidence thereof.

23 7. Code section 2762 states, in pertinent part:

24 In addition to other acts constituting unprofessional conduct within the meaning
25 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
27 a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or
furnish or administer to another, any controlled substance as defined in Division 10
28 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug
or dangerous device as defined in Section 4022.

1 (b) Use any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
3 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
4 dangerous or injurious to himself or herself, any other person, or the public or the extent
5 that such use impairs his or her ability to conduct with safety to the public the practice
6 authorized by his or her license.

7 (c) Be convicted of a criminal offense involving the prescription,
8 consumption, or self-administration of any of the substances described in subdivisions (a)
9 and (b) of this section, or the possession of, or falsification of a record pertaining to, the
10 substances described in subdivision (a) of this section, in which event the record of the
11 conviction is conclusive evidence thereof.

12 8. Code section 4060 states, in pertinent part:

13 No person shall possess any controlled substance, except that furnished to a
14 person upon the prescription of a physician, dentist, podiatrist, optometrist, or
15 veterinarian, or furnished pursuant to a drug order issued by a certified
16 nurse-midwife . . . , a nurse practitioner . . . , or a physician assistant, or a pharmacist. . .

17 9. Code section 490 states: "A board may suspend or revoke a license on the
18 ground that the licensee has been convicted of a crime, if the crime is substantially related to the
19 qualifications, functions, or duties of the business or profession for which the license was issued.
20 A conviction within the meaning of this section means a plea or verdict of guilty or a conviction
21 following a plea of nolo contendere. Any action which a board is permitted to take following the
22 establishment of a conviction may be taken when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal, or when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code."

26 10. Code section 125.3 provides, in pertinent part, that the Board may request
27 the administrative law judge to direct a licensee found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

11. DRUGS

12 "Methamphetamine" is a Schedule II controlled substance pursuant to
13 Health and Safety Code section 11055, subdivision (d)(2).

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FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

12. Respondent is subject to disciplinary action under Code section 2761, subdivision (f), in that Respondent has been convicted of crimes substantially related to the qualifications, functions and duties of a registered nurse, as follows:

(a) On or about August 8, 2002, in a criminal proceeding entitled, *People of the State of California v. Joselito B. Garcia* in the Superior Court of the State of California for the County of San Francisco, Case No. 2059709, the respondent was convicted by the court on his plea of guilty for violating Penal Code section 452, subdivision (b) (Causing Fire to an Inhabited Structure and Property), a misdemeanor. The circumstances of the crime are that on or about July 24, 2002, the respondent was arrested by the San Francisco Police Department for willfully and recklessly setting fire and causing to be burned, a hostel residence located at 70 Derby Street, San Francisco, California, by leaving a lit candle burning in a metal box in his room.

(b) On or about December 13, 2002, in a criminal proceeding entitled, *People of the State of California v. Joselito B. Garcia aka Joselito Garcia, aka Joselito Jay Joseph Belista, aka Lito Garcia, aka Lito Garcia, aka Joselito Belista Garcia, aka Joselito Belista, aka Jay Garcia, aka Joseph Garcia* in the Superior Court of the State of California for the County of San Mateo, Case No. SM322576A, the respondent was convicted by the court on his plea of nolo contendere for violating Health and Safety Code section 11377, subdivision (a) (Unlawfully Possess a Controlled Substance, to wit: Methamphetamine, a controlled substance), a misdemeanor, and violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of an Alcoholic Beverage or a Drug or Under Their Combined Influence), a misdemeanor. The circumstances of the crime are that on or about November 29, 2002, Respondent, while driving his vehicle, was stopped by the Half Moon Bay Police Department for driving erratically. Respondent was subsequently arrested for driving under the influence of an alcoholic beverage or a narcotic, or combined influence; possession of paraphernalia used for unlawfully injecting or smoking a controlled substance; possession of hypodermic syringes; and

possession of Methamphetamine, a Schedule II controlled substance.

SECOND CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance)

13. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that Respondent possessed Methamphetamine, a controlled substance, without a valid prescription by a physician, dentist, podiatrist, optometrist, or veterinarian, in violation of Code section 4060, as set forth in paragraph 12, subdivision (b), above.

THIRD CAUSE FOR DISCIPLINE

(Use a Controlled Substance to the Extent or in a Manner Dangerous or Injurious)

14. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that Respondent used Methamphetamine or alcohol, or a combination thereof, to an extent or in a manner dangerous or injurious to himself or others, as set forth in paragraph 12, subdivision (b), above.

FOURTH CAUSE FOR DISCIPLINE

(Conviction of a Crime Involving a Controlled Substance)

15. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in that Respondent was convicted of a crime involving the consumption, self-administration, or possession of a controlled substance, as set forth in paragraph 12 subdivision (b), above.

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PRAYER

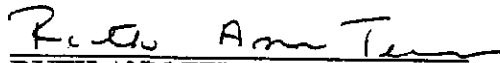
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 461597 issued to JOSELITO B. GARCIA, aka JOSELITO GARCIA, aka JOSELITO JAY JOSEPH BELISTA, aka LILTO GARCIA, aka LITO GARCIA, aka JOSELITO BELISTA GARCIA, aka JOSELITO BELISTA, aka JAY GARCIA, aka JOSEPH GARCIA;

2. Ordering JOSELITO B. GARCIA, aka JOSELITO GARCIA, aka JOSELITO JAY JOSEPH BELISTA, aka LILTO GARCIA, aka LITO GARCIA, aka JOSELITO BELISTA GARCIA, aka JOSELITO BELISTA, aka JAY GARCIA, aka JOSEPH GARCIA to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/21/05


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant